

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

DEC 12 2005

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

JOSE ANTONIO VASQUEZ-
VILLANUEVA,

Defendant - Appellant.

No. 05-50238

D.C. No. CR-04-02343-JTM

MEMORANDUM^{*}

Appeal from the United States District Court
for the Southern District of California
Jeffrey T. Miller, District Judge, Presiding

Submitted December 5, 2005^{**}

Before: GOODWIN, W. FLETCHER and FISHER, Circuit Judges.

Jose Antonio Vasquez-Villanueva appeals his sentence of 12 months and one day followed by 3 years of supervised imposed following a guilty-plea

^{*} This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

^{**} This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

conviction for being a deported alien found in the United States in violation of 8 U.S.C. § 1326. We have jurisdiction pursuant to 28 U.S.C. § 1291, and we affirm.

Vasquez contends that the district court violated the statutory maximum term of supervised release because Vasquez's prior conviction for possession of a controlled substance in violation of California Health and Safety Code § 11377(a) was not an aggravated felony. We disagree. Vasquez' state conviction qualifies as an "aggravated felony" under 8 U.S.C. § 1101(a)(43)(B) because it is (1) punishable under the federal Controlled Substances Act and (2) punishable by more than one year's imprisonment under applicable state law. *See United States v. Arellano-Torres*, 303 F.3d 1173, 1179-80 (9th Cir. 2002). Accordingly, the district did not err by imposing a 3-year term of supervised release. See 8 U.S.C. § 1326; 18 U.S.C. § 3583(b).

Vasquez also raises an *Apprendi* challenge to the 3-year term of supervised release because the prior conviction was not charged in the information. This contention is foreclosed by *Almendarez-Torres v. United States*, 523 U.S. 224 (1998).

AFFIRMED.